

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 224

HOUSE BILL 2200

AN ACT

AMENDING SECTIONS 32-1154, 32-1155 AND 32-1158, ARIZONA REVISED STATUTES;
RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1154, Arizona Revised Statutes, is amended to
3 read:

4 32-1154. Grounds for suspension or revocation of license;
5 continuing jurisdiction; civil penalty; recovery
6 fund award

7 A. The holder of a license or any person listed on a license pursuant
8 to this chapter shall not commit any of the following acts or omissions:

9 1. Abandonment of a contract or refusal to perform after submitting a
10 bid on work without legal excuse for the abandonment or refusal.

11 2. Departure from or disregard of plans or specifications or any
12 building codes of the state or any political subdivision of the state in any
13 material respect which is prejudicial to another without consent of the owner
14 or the owner's duly authorized representative and without the consent of the
15 person entitled to have the particular construction project or operation
16 completed in accordance with such plans and specifications and code.

17 3. Violation of any rule adopted by the registrar.

18 4. Failure to comply with the statutes or rules governing social
19 security, workers' compensation or unemployment insurance.

20 5. Failure to pay income taxes, withholding taxes or any tax imposed
21 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the
22 licensed business.

23 6. Misrepresentation of a material fact by the applicant in obtaining
24 a license.

25 7. The doing of a wrongful or fraudulent act by the licensee as a
26 contractor resulting in another person being substantially injured.

27 8. Conviction of a felony.

28 9. Failure in a material respect by the licensee to complete a
29 construction project or operation for the price stated in the contract, or in
30 any modification of the contract.

31 10. Aiding or abetting a licensed or unlicensed person to evade this
32 chapter, knowingly OR RECKLESSLY combining or conspiring with a licensed or
33 unlicensed person, allowing one's license to be used by a licensed or
34 unlicensed person or acting as agent, partner, associate or otherwise of a
35 licensed or unlicensed person with intent to evade this chapter.

36 11. Failure by a licensee or agent or official of a licensee to pay
37 monies in excess of seven hundred fifty dollars when due for materials or
38 services rendered in connection with the licensee's operations as a
39 contractor when the licensee has the capacity to pay or, if the licensee
40 lacks the capacity to pay, when the licensee has received sufficient monies
41 as payment for the particular construction work project or operation for
42 which the services or materials were rendered or purchased.

43 12. Failure of a contractor to comply with any safety or labor laws or
44 codes of the federal government, state or political subdivisions of the
45 state.

1 13. Failure in any material respect to comply with this chapter.

2 14. Knowingly entering into a contract with a contractor for work to be
3 performed for which a license is required with a person not duly licensed in
4 the required classification.

5 15. Acting in the capacity of a contractor under any license issued
6 under this chapter in a name other than as set forth upon the license.

7 16. False, misleading or deceptive advertising whereby any member of
8 the public may be misled and injured.

9 17. Knowingly contracting beyond the scope of the license or licenses
10 of the licensee.

11 18. Contracting or offering to contract or submitting a bid while the
12 license is under suspension or while the license is on inactive status.

13 19. Failure to notify the registrar in writing within a period of
14 fifteen days of any disassociation of the person who qualified for the
15 license. Such licensee shall have sixty days from the date of such
16 disassociation to qualify through another person.

17 20. Subsequent discovery of facts which if known at the time of
18 issuance of a license or the renewal of a license would have been grounds to
19 deny the issuance or renewal of a license.

20 21. Having a person named on the license who is named on any other
21 license in this state or in another state which is under suspension or
22 revocation unless the prior revocation was based solely on a violation of
23 this paragraph.

24 22. Continuing a new single family residential construction project
25 with actual knowledge that a pretreatment wood-destroying pests or organisms
26 application was either:

27 (a) Not performed at the required location.

28 (b) Performed in a manner inconsistent with label requirements, state
29 law or rules.

30 23. Failure to take appropriate corrective action to comply with this
31 chapter or with rules adopted pursuant to this chapter without valid
32 justification within a reasonable period of time after receiving a written
33 directive from the registrar. The written directive shall set forth the time
34 within which the contractor is to complete the remedial action. The time
35 permitted for compliance shall not be less than fifteen days from the date of
36 issuance of the directive. A license shall not be revoked or suspended nor
37 shall any other penalty be imposed for a violation of this paragraph until
38 after a hearing has been held.

39 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
40 otherwise intimidate any contractor or materialman from serving a preliminary
41 notice pursuant to section 33-992.01.

42 B. The registrar may on the registrar's own motion, and shall on the
43 written complaint of any person, investigate the acts of any contractor
44 within this state and may temporarily suspend, with or without imposition of
45 specific conditions in addition to increased surety bond or cash deposit

1 requirements, or permanently revoke any or all licenses issued under this
2 chapter if the holder of the license issued pursuant to this chapter is
3 guilty of or commits any of the acts or omissions set forth in subsection A
4 of this section.

5 C. The expiration, cancellation, suspension or revocation of a license
6 by operation of law or by decision and order of the registrar or a court of
7 law or the voluntary surrender of a license by a licensee shall not deprive
8 the registrar of jurisdiction to proceed with any investigation of or action
9 or disciplinary proceeding against such licensee, or to render a decision
10 suspending or revoking such a license, or denying the renewal or right of
11 renewal of such license.

12 D. The registrar may impose a civil penalty of not to exceed five
13 hundred dollars on a contractor for each violation of subsection A, paragraph
14 23 of this section. Civil penalties collected pursuant to this subsection
15 shall be deposited in the residential contractors' recovery fund. The
16 failure by the licensee to pay any civil penalty imposed under this
17 subsection results in the automatic revocation of the license thirty days
18 after the effective date of the order providing for the civil penalty. No
19 future license may be issued to an entity consisting of a person associated
20 with the contractor, as defined in section 32-1101, subsection A, paragraph
21 5, unless payment of any outstanding civil penalty is tendered.

22 E. The registrar shall impose a civil penalty of not to exceed one
23 thousand dollars on a contractor for each violation of subsection A,
24 paragraph 18 of this section. Civil penalties collected pursuant to this
25 subsection shall be deposited in the residential contractors' recovery
26 fund. The failure by the licensee to pay any civil penalty imposed under
27 this subsection results in the automatic permanent revocation of the license
28 thirty days after the effective date of the order providing for the civil
29 penalty. No future license may be issued to an entity consisting of a person
30 associated with the contractor, as defined in section 32-1101, subsection A,
31 paragraph 5, unless payment of any outstanding civil penalty is tendered.

32 F. Notwithstanding any other provisions in this chapter, if a
33 contractor's license has been revoked or has been suspended as a result of an
34 order to remedy a violation of this chapter, and the contractor refuses or is
35 unable to comply with the order of the registrar to remedy the violation, the
36 registrar may order payment from the residential contractors' recovery fund
37 to remedy the violation. The registrar shall serve the contractor with a
38 notice setting forth the amount claimed or to be awarded. If the contractor
39 contests the amount or propriety of the payment, the contractor shall respond
40 within ten days of the date of service by requesting a hearing to determine
41 the amount or propriety of the payment. Failure by the contractor to respond
42 in writing within ten days of the date of service shall be deemed a waiver by
43 the contractor of the right to contest the amount claimed or to be
44 awarded. Service may be made by personal service to the contractor or by
45 mailing a copy of the notice by registered mail with postage prepaid to the

1 contractor's latest address of record on file in the registrar's office. If
2 service is made by registered mail, it is effective five days after the
3 notice is mailed. Except as provided in section 41-1092.08, subsection H,
4 the contractor or injured person may seek judicial review of the registrar's
5 final award pursuant to title 12, chapter 7, article 6.

6 Sec. 2. Section 32-1155, Arizona Revised Statutes, is amended to read:
7 32-1155. Filing of complaint; resolution of complaint; service
8 of notice; failure to answer

9 A. Upon the filing of a written complaint with the registrar charging
10 a licensee with the commission, within two years prior to the date of filing
11 the complaint, of an act that is cause for suspension or revocation of a
12 license, the registrar after investigation may issue a citation or upon
13 written request of the complainant may issue a citation directing the
14 licensee, within ten days after service of the citation upon the licensee, to
15 appear by filing with the registrar the licensee's written answer to the
16 citation and complaint showing cause, if any, why the licensee's license
17 should not be suspended or revoked. Service of citation upon the licensee
18 shall be fully effected by personal service or by mailing a true copy
19 thereof, together with a true copy of the complaint, by registered mail in a
20 sealed envelope with postage prepaid and addressed to the licensee at the
21 licensee's latest address of record in the registrar's office. Service of
22 the citation and complaint shall be complete at the time of personal service
23 or five days after deposit in the mail. THE TWO YEAR PERIOD PRESCRIBED BY
24 THIS SUBSECTION SHALL COMMENCE ON THE EARLIER OF THE CLOSE OF ESCROW OR
25 ACTUAL OCCUPANCY FOR NEW HOME OR OTHER NEW BUILDING CONSTRUCTION AND
26 OTHERWISE SHALL COMMENCE ON COMPLETION OF THE SPECIFIC PROJECT.

27 B. Failure of the licensee to answer within ten days after service
28 shall be deemed an admission by the licensee of the licensee's commission of
29 the act or acts charged in the complaint and the registrar may then suspend
30 or revoke the licensee's license.

31 Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:
32 32-1158. Minimum elements of a contract

33 A. From and after December 31, 1992 UNTIL DECEMBER 31, 2007, any
34 contract in an amount of more than one thousand dollars and less than one
35 hundred fifty thousand dollars entered into between a contractor and the
36 owner of a property to be improved shall contain in writing at least the
37 following information:

38 1. The name of the contractor and the contractor's business address
39 and license number.

40 2. The name and mailing address of the owner and the jobsite address
41 or legal description.

42 3. The date the parties entered into the contract.

43 4. The estimated date of completion of all work to be performed under
44 the contract.

1 5. A description of the work to be performed under the contract.
2 6. The total dollar amount to be paid to the contractor by the owner
3 for all work to be performed under the contract, including all applicable
4 taxes.
5 7. The dollar amount of any advance deposit paid or scheduled to be
6 paid to the contractor by the owner.
7 8. The dollar amount of any progress payment and the stage of
8 construction at which the contractor will be entitled to collect progress
9 payments during the course of construction under the contract.
10 B. FROM AND AFTER DECEMBER 31, 2007, ANY CONTRACT IN AN AMOUNT OF MORE
11 THAN ONE THOUSAND DOLLARS ENTERED INTO BETWEEN A CONTRACTOR AND THE OWNER OF
12 A PROPERTY TO BE IMPROVED SHALL CONTAIN IN WRITING AT LEAST THE FOLLOWING
13 INFORMATION:
14 1. THE NAME OF THE CONTRACTOR AND THE CONTRACTOR'S BUSINESS ADDRESS
15 AND LICENSE NUMBER.
16 2. THE NAME AND MAILING ADDRESS OF THE OWNER AND THE JOBSITE ADDRESS
17 OR LEGAL DESCRIPTION.
18 3. THE DATE THE PARTIES ENTERED INTO THE CONTRACT.
19 4. THE ESTIMATED DATE OF COMPLETION OF ALL WORK TO BE PERFORMED UNDER
20 THE CONTRACT.
21 5. A DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE CONTRACT.
22 6. THE TOTAL DOLLAR AMOUNT TO BE PAID TO THE CONTRACTOR BY THE OWNER
23 FOR ALL WORK TO BE PERFORMED UNDER THE CONTRACT, INCLUDING ALL APPLICABLE
24 TAXES.
25 7. THE DOLLAR AMOUNT OF ANY ADVANCE DEPOSIT PAID OR SCHEDULED TO BE
26 PAID TO THE CONTRACTOR BY THE OWNER.
27 8. THE DOLLAR AMOUNT OF ANY PROGRESS PAYMENT AND THE STAGE OF
28 CONSTRUCTION AT WHICH THE CONTRACTOR WILL BE ENTITLED TO COLLECT PROGRESS
29 PAYMENTS DURING THE COURSE OF CONSTRUCTION UNDER THE CONTRACT.
30 9. THAT THE PROPERTY OWNER HAS THE RIGHT TO FILE A WRITTEN COMPLAINT
31 WITH THE REGISTRAR FOR AN ALLEGED VIOLATION OF SECTION 32-1154, SUBSECTION A.
32 THE CONTRACT SHALL CONTAIN THE REGISTRAR'S TELEPHONE NUMBER AND WEBSITE
33 ADDRESS AND SHALL STATE THAT COMPLAINTS MUST BE MADE WITHIN THE APPLICABLE
34 TIME PERIOD AS SET FORTH IN SECTION 32-1155, SUBSECTION A. THE INFORMATION
35 IN THIS PARAGRAPH MUST BE PROMINENTLY DISPLAYED IN THE CONTRACT IN TEN POINT
36 BOLD TYPE, AND THE CONTRACT SHALL BE SIGNED BY THE PROPERTY OWNER AND THE
37 CONTRACTOR OR THE CONTRACTOR'S DESIGNATED REPRESENTATIVE. THIS PARAGRAPH
38 DOES NOT APPLY TO A PERSON WHO IS SUBJECT TO AND COMPLIES WITH SECTION
39 12-1365.
40 B- C. At the time of signing a contract the owner shall be provided a
41 legible copy of all documents signed and a written and signed receipt for and
42 in the true amount of any cash paid to the contractor by the owner.

1 ~~G.~~ D. The requirements of this section shall not constitute
2 prerequisites to the formation or enforcement of a contract. Failure to
3 comply with the requirements of this section shall not constitute a defense
4 by either party to an action for compensation, damages, breach, enforcement
5 or other cause of action based on the contract.

APPROVED BY THE GOVERNOR MAY 23, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2007.